LAI POH KIM

v.

MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[ORIGINATING SUMMONS NO. R8-24-24-1990]
1 SEPTEMBER 1991

***PREVENTIVE DETENTION**: Restriction order - Restricted residence - Restriction not procured by steps which are entirely regular - Detention not on the authority of a valid or legal order - Restricted Residence Act 1933 ss. 2(i), (ii), 2A(i) - RHC 1980.*

On 15 June 1988 the Minister issued a warrant of arrest against the plaintiff under the Restricted Residence (Enactment) (FMS Cap. 39) (the Enactment) and on 22 June 1988 the plaintiff was arrested. The plaintiff signed a statement on 22 June 1988 admitting the grounds of arrest as correct and did not challenge the grounds given for his arrest and did not appeal as regard the place to which he would be restricted. On 19 July 1988 an order was made restricting the residence of the plaintiff to Kuala Krai for three years.

The plaintiff now seeks declarations that the Deputy Minister's restriction order made on 19 July 1988 is unlawful, null and void because the Deputy Minister took 34 days (if computed from the date he issued the warrant of arrest on 15 June 1988) or 27 days (if computed from the date of the plaintiff's arrest on 22 June 1988) before he took action to make the restriction order under s. 2(ii) of the Enactment; and that meanwhile the plaintiff was detained in prison at Pulau Pinang.

The main issue for consideration by this Court is whether the prolonged detention of the plaintiff in the prison at Pulau Pinang before the Deputy Minister made the restriction order under s. 2(ii) of the Enactment was unlawful which renders the making of the restriction order null and void.

Held:

[1] Section 2(ii) of the Enactment does not specify a time frame and the correct test to be applied therefore is not on the basis of unreasonable delay but convenient speed.

[2] Had he disputed the grounds of his arrest and detention, there might be good cause for the Deputy Minister to hold a further inquiry under s. 2(ii) of the Enactment. The plaintiff had admitted the grounds given for his arrest and detention and the Minister had under the circumstances not acted with all convenient speed in making the restriction order, which renders the detention of the plaintiff in the prison for the relevant period unlawful.

[3] The restriction order not having been properly issued in accordance with the requirement of the law, is therefore null and void and is of no effect.

[Plaintiff's application allowed.]

Cases referred to:

Superintendent of Pudu Prison v. Sim Kie Chon [1980] 1 MLJ 494 ***(cit)***

Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia v. Lian Nyun Fui [1991] 1 CLJ (Rep) 458 ***(foll)***

Legislation referred to:

Restricted Residence Enactment (FMS Cap 39) ss. 2(i), (ii), A(i)

For the plaintiff - Karpal Singh; M/s. Karpal Singh & Co.
For the defendant - Noorbahri, SFC

JUDGMENT

Eusoff Chin J:

The plaintiff applied for declarations that his restriction to the town of Kuala Krai, Kelantan on the authority of a restriction order dated 19 July 1988 signed by the first defendant (hereinafter referred to as the "Deputy Minister") is null and void and of no effect, and that consequently the plaintiff is not obliged to comply with the said order and restriction imposed upon him. The ground of his application is that his restriction has not been procured by steps which are entirely regular thereby rendering his initial and continued detention illegal and unlawful, since his detention is not on the authority of a valid or legal order.

On 15 June 1988 the Minister issued a warrant of arrest under s. 2(i) of the Restricted Residence Enactment (FMS Cap. 39) (the Enactment) for the arrest and detention of the plaintiff, at the prison at Pulau Pinang until further order of the Minister. Lampiran 'A' to the warrant of arrest stated the grounds of arrest, and named the township of Kuala Krai, Kelantan as the place to which the plaintiff would be restricted.

On 22 June 1988, the plaintiff was arrested by Insp. Low Meng Chua who explained to the plaintiff the contents of Lampiran 'A'. The plaintiff did not want to challenge the grounds given for his arrest, and he signed a statement dated 22 June 1988, addressed to the Secretary General, Ministry of Home Affairs stating that he (the plaintiff) admitted the grounds of his arrest as correct, and did not want to make any appeal to the Minister as regard the place to which he would be restricted. The signed statement of the plaintiff dated 22 June 1988 is exhibited as 'Exh. LMC3' to the affidavit of Insp. Low Meng Chua affirmed on 13 July 1990.

On 19 July 1988 the Minister made an order under s. 2(ii) of the Enactment restricting the residence of the plaintiff to the township of Kuala Krai, Kelantan for a period of three years.

For ease of reference, I quote the relevant provisions of s. 2(i) and (ii), and 2A(i) of the Enactment which are as follows:

> 2(i) Whenever it shall appear to the Minister on such written information after such enquiry as he may deem necessary that there are reasonable grounds for believing that any person should be required to reside in any particular District or Mukim or should be prohibited from entering into any particular District or Districts or Mukim or Mukims the Minister may issue an order in one of the Forms in the Schedule for the arrest and detention or, if he is already in prison, for the detention of that person.
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> (ii) The Minister thereafter after such further enquiry as he may deem necessary may make an order in the Form in the Schedule that from a date to be stated in the order, the person do reside in such District or Mukim as may be specified in the order or do not enter into such District or Districts or Mukim or Mukims as may be so specified.
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> 2A (i) Without prejudice to the provisions of s. 2 of this Enactment, the Minister may by order direct that any person named in the order shall be placed under police supervision for any period not exceeding five years and may renew any such order for a further period or periods not exceeding one year at any one time.

Before me, Karpal Singh submitted that the Deputy Minister's restriction order made on 19 July 1988 is unlawful, null and void because the Deputy Minister took 34 days (if computed from the date he issued the warrant of arrest on 15 June 1988) or 27 days (if computed from

the date of the plaintiff's arrest on 22 June 1988) before he took action to make the restriction order under s. 2(ii) of the Enactment; and that meanwhile the plaintiff was detained in prison at Pulau Pinang.

Noorbahri for the Deputy Minister submitted that the Deputy Minister had to consider whether a further inquiry was necessary in any event under s. 2(ii) of the Enactment and in any event whether the plaintiff would make an appeal to him as regards the place of restriction named in the Lampiran 'A' to the warrant of arrest. He said that under the circumstances the delay was justified. He cited an earlier judgment given by me in *Sam Choy's* case (K.L. High Court R8-24-29-90) in which I held that a delay of 25 days calculated from the date of arrest before an order was made by the Deputy Minister under s. 2(ii) of the Enactment did not render the order unlawful. The facts in *Sam Choy's* case are different from the present case. In *Sam Choy's* case, the plaintiff had, after his arrest, made an appeal to the Deputy Minister for the Deputy Minister to reconsider whether he could be allowed to be restricted to Bahau instead of to Baling as named in Lampiran 'A' attached to the warrant of arrest. But in the present case, the plaintiff had signed a statement addressed to the Secretary General of the Ministry of Home Affairs to the effect that he did not dispute the grounds given for his arrest and that he did not want to make an appeal to the Minister as regards the place (Kuala Krai) to which he would be restricted. The affidavit of the Deputy Minister of Home Affairs served on 27 July 1990 confirms this when he said at para. 9:

> Selepas plaintif ditangkap, beliau diberi peluang untuk membuat representasi tetapi beliau enggan berbuat demikian.

Noorbahri had indicated that he would also argue on the issue of *res-judicata*, but having examined the Supreme Court decision in *Superintendent of Pudu Prison v. Sim Kie Chon*, [1980] 1 MLJ 494 abandoned this argument.

The main issue for consideration by this Court is whether the prolonged detention of the plaintiff in the prison at Pulau Pinang before the Deputy Minister made the restriction order under s. 2(ii) of the Enactment was unlawful which renders the making of the restriction order null and void.

In *Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia v. Lian Nyun Fui* [1991] 1 CLJ (Rep) 458 the Supreme Court dealt with a similar issue where the respondent was detained in prison for a period of about six weeks before the Timbalan Menteri made the restriction order under s. 2(ii) of the Enactment. Tun Abdul Hamid Omar (LP) delivering the judgment of the Court, held:

> ... it seems clear that a time frame is not prescribed under s. 2(ii) of the Enactment and the Timbalan Menteri cannot therefore be said to be imposed with an obligation to make a restriction order within a specified time. The word 'thereafter' used in subs. (ii) of the Enactment clearly connotes that the Timbalan Menteri may make a restriction order 'thereafter', that is, some time after making the order of arrest and detention, after such further enquiry he may deem necessary.
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> In the light of the judgment in *Phua Hing Lai's* case [1990] 1 CLJ (Rep) 238 the position in law seems to be that when no time frame is prescribed then anything that shall be done under s. 2(ii) shall be done with all convenient speed. Accordingly in respect of situation (1), the further enquiry and the issue of the restriction order shall be effected with all convenient speed. What constitutes convenient speed would depend on the circumstances of each case ...
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> where the Timbalan Menteri does not deem it necessary for any further enquiry he ought to proceed thereafter, that is, after the detention, to make the restriction order with all convenient speed.

> The correct test to be applied therefore is not on the basis of unreasonable delay but convenient speed ...
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> ... Strictly it was for the respondent to show that the Timbalan Menteri had not so acted and not for the Timbalan Menteri to provide an explanation acceptable to the Court.
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> The Timbalan Menteri had made a firm decision that it was not necessary to hold any further enquiry under s. 2(ii) of the Enactment. All he did was to scrutinize the information and documents, presumably in respect of those he already had in his possession at the time he issued the order for the plaintiff's arrest and detention. There was thus nothing to show that the Timbalan Menteri had to scrutinize new information or documents other than those he had already scrutinized before making the order under s. 2(ii). There was also nothing to show that he caused further statements to be recorded or further documents to be taken possession of after the order under s. 2(i). Why therefore did he have to wait six weeks to make the restriction order?

In the present case, the plaintiff had admitted the grounds given for his arrest and detention. Had he disputed the grounds of his arrest and detention, there might be good cause for the Deputy Minister to hold a further inquiry under s. 2(ii) of the Enactment. There is no evidence that further documents or information had been received by the Deputy Minister which would justify such further inquiry. The plaintiff did not want to, and he never did file any appeal to the Deputy Minister as regards the place to which he is to be restricted. Having regard to these facts, I hold that the Deputy Minister had, under the circumstances, not acted with all convenient speed in making the restriction order under s. 2(ii) of the Enactment, which renders the detention of the plaintiff in the Pulau Pinang prison for the relevant period unlawful. The restriction order not having been properly issued in accordance with the requirements of the law, is therefore null and void and is of no effect, and I so declare. Consequently the plaintiff is not obliged to comply with the said order and the restrictions imposed upon him by that order.

Also found at [1992] 1 CLJ 151